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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS

RATIONALIZATION OF THE WORK OF THE COMMISSION

Written statement submitted by the International League for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

GE.99-10488 (E)

On the report of the Bureau of the fifty-fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112

1. The Bureau's report (E/CN.4/1999/104) represents an important study of the expanding work of the Commission on Human Rights with many welcome contributions. However, as a compromise document incorporating the views of various Governments, many of whom work actively to obstruct the promotion and protection of human rights and the strengthening of the rule of law over their powerful States, the report indicates that the Commission has not yet achieved the necessary political will to serve as the human rights conscience of the United Nations, much less of humankind.

2. The very oft-repeated phrase "promote and protect" contains encoded within it a deadly device of delay and distraction from severe human rights crises. By merely "promoting" human rights - speaking rhetorically, educating, advising and assisting - and "protecting" - establishing mechanisms that are supposed to defend human rights - the United Nations has avoided confronting the necessity of *implementing* human rights, *intervening* in human rights situations, *acting* in a timely fashion to prevent human rights violations, and *exposing violations to public opprobrium* when necessary. By leaving such activities largely to the NGO community, the Commission loses a crucial moment in history when reform of the United Nations is emphatically under way under the leadership of Kofi Annan.

3. If the Commission is serious about enlisting non-governmental actors and increasing "grass-roots awareness about special procedures" it must aggressively embark upon (i) an education campaign to explain the mandates and use of the special procedures through OHCHR's Website and printed pamphlets; (ii) publication of the work plans, trip schedules, names of staff and their fax and e-mail address for each mandate on the Website; (iii) easy access to the work of the rapporteurs and experts on the Website (e.g. no one should have to guess that they lie three levels under a heading called "structures"). Special rapporteurs should be encouraged to spend more than three days in a country, and to provide ample opportunity for NGOs to provide information both before, during, and after their trips, and should be encouraged to add updates on crucial developments in their oral reports to the Commission or the General Assembly.

4. The Bureau's report repeatedly notes the need for follow-up and implementation, and yet indicates no form of real consequences for those Governments which fail to issue invitations to rapporteurs or follow up on their proposals. The report does not grapple with the question of the lack of connection between the Commission, OHCHR and the Security Council - there is no encouragement for either the High Commissioner or individual rapporteurs to report directly to the Security Council in person, or to have a rapid pipeline established for their materials to reach the Office of the Secretary-General; indeed, most thematic rapporteurs (11 out of 15), e.g. on freedom of expression and torture, do not even report to the General Assembly, but only to the Commission.

5. In revising the "1503 procedure", a desperately needed reform, it must be emphasized that the "five independent experts" in the proposed Committee on

Situations (rec. 11) and the newly proposed and renamed Sub-Commission, to consist of 15 members (rec. 12), must truly be independent, that is, not persons currently employed by the foreign or other ministries of their nations, but publicly recognized as dispassionate and impartial precisely because they represent not a Government, but an institution of civil society. Deadlines must be established on the communications referred back to Governments and an appeals procedure incorporated for complaints which are not referred to the Commission.

6. Regrettably, the Sub-Commission, under the envisioned reforms, loses its role as a conveyor belt of situations not addressed by the Commission through its country resolutions, e.g. the resolution adopted at the fiftieth session on Belarus, or the draft resolution on Algeria, which failed to be adopted but which nevertheless drew attention to a critical situation. In order to prevent the "analytical reports to the Commission" (in lieu of negotiated resolutions) from degenerating into the type of absurd and irrelevant reporting now done at the Commission, a further elaboration of its brief must be established, mainly in the direction of serving as an early warning on situations not yet reaching the attention of the Commission or its special procedures.

7. The report repeatedly outlines three strands of activity for each mechanism: "effective promotion and protection of human rights can rarely be achieved without a combination of ingredients, including: frank and genuine dialogue; the identification of opportunities for advice and assistance to willing Governments; and objective monitoring and fact-finding, which is an essential starting point and sine qua non for the work of the special procedures" (executive summary).

8. Such modes of endeavour as the "hard" functions of monitoring and reporting on human rights violations should not be confused with the widely divergent "soft" functions of dialogue, negotiations, advice and assistance. While the Commission viewed as a whole may undertake some of these functions, the stress should not be placed on each individual mechanism to perform all three types of activity. Sometimes Governments, either at the bilateral level or at the level of the Security Council, or in regional institutions, are unwilling to exert the political will to address the underlying human rights situations which lead to widespread deterioration of human rights, armed conflict, refugees and famine. They shift this burden onto the Commission, so that the High Commissioner, and the rapporteurs, sense that the responsibility for delicate diplomacy, creation of openings and opportunities, polite but meaningless dialogue in order to keep a country engaged - all fall on their shoulders. But rapporteurs are so called because they must *report*, not engage in diplomacy. The High Commissioner is so called because he or she is *commissioned* with a specific task to perform, which ought to be defined as: (i) vigorous advocacy; (ii) early warning; (iii) intervention: (iv) and even confrontation when a situation warrants it. Diplomatic niceties should be left to diplomats, so that the Commission and its working groups, experts and mechanisms can get on with the task of objectively and effectively reporting on human rights free from political entanglement.

9. In observation 11, in section II.B, the report thus commingles reporting, fact-finding and advocacy (intervention with concerns about serious

human rights violations) with "dialogue" and "advice". OHCHR staff and some rapporteurs will be kept busy talking with reluctant Governments, setting up law libraries, devising judges' training programmes and sponsoring essay contests for high school students on what the Universal Declaration of Human Rights means - even as a Government disbars lawyers or detains, fines, imprisons and mistreats numerous citizens, thus requiring quite a different type of activity from the mechanisms. "Technical assistance to willing Governments" implies that if a Government - in order to escape more severe criticism by the Commission or other bodies - consents to "training" and delivery of aid or equipment, a victory is declared, and it has been "let off the hook". Too often, such technical assistance is essentially a soft loan, and serves only as a distraction from severe, deep-seated human rights problems. Particular attention must be paid to this pitfall in view of the recent agreement for cooperation between OHCHR and the United States Agency for International Development, about which a litany of worst practices can be recited, in Africa as well as in the countries of the former Soviet Union.

10. A moral dilemma is created by the commingling of functions when a Government, such as China, has arrested hundreds of activists for seizing upon the promise of the International Covenant on Civil and Political Rights, if the Commission and OHCHR are seen to dilute or downplay human rights commentary in the interests of the preservation of dialogue - a dialogue already sustained by numerous Governments at the bilateral level, and numerous businesses at the trade level, leaving the way free for greater impartiality by the United Nations. Such, for example, was the recent statement by the High Commissioner calling for "fair trails" of persons detained in China (instead of their unconditional release), although access to lawyers, and the lack of independence of the judiciary, is well documented.

11. The notion of cutting back working groups to single rapporteurs (rec. 1) must be jettisoned. A working group provides a group of distinguished and highly competent minds which can be brought to bear, with different perspectives, on intractable situations always represented in countries with chronic and widespread detention. When a working group enters a country, it garners far more respect and displays far more gravitas than a single individual. A working group can assume work on a variety of cases, impossible for an individual.

12. The notion of "consensus" in the work of the Commission must be resolutely rejected, as violating countries, and blocs supporting the violator, can always thwart the mechanisms.